

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	WT DOCKET No.: 97-56
)	
MARC SOBEL)	
)	
Applicant for Certain Part 90)	
Authorizations in the Los)	
Angeles Area and Requestor of)	
Certain Finder's Preferences)	
)	
MARC SOBEL and MARC SOBEL)	
d/b/a AIR WAVE COMMUNICATIONS)	
)	
Licensees of Certain Part 90)	
Stations in the Los Angeles)	
Area)	

FEDERAL COMMUNICATIONS
COMMISSION
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APR 9 '97

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Courtroom 2
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
March 19, 1997

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOHN M. FRYSIK
Administrative Law Judge

APPEARANCES:

On behalf of Marc Sobel:

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APPEARANCES (cont.):

On behalf of James A. Kay, Jr.

BARRY A. FRIEDMAN, ESQ.
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On behalf of WTB-FCC:

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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

IDENTIFIED RECEIVED REJECTED
None.

Hearing Began: 9:00 a.m. Hearing Ended: 9:15 a.m.

1 P R O C E E D I N G S

2 JUDGE FRYSIAK: Good morning, all. This is a
3 prehearing conference in the matter of Marc Sobel, Docket
4 Number 97-56. May we note your appearances for the record,
5 please?

6 MR. KELLER: Yes, Your Honor, I'm Bob Keller,
7 Robert J. Keller, P.C., and I'm representing Marc Sobel and
8 Air Wave Communications.

9 MR. SCHONMAN: Good morning, Your Honor. Gary
10 Schonman on behalf of the Chief, Wireless Telecommunications
11 Bureau.

12 JUDGE FRYSIAK: Now, we have visitors or what?

13 MR. FRIEDMAN: Yes, we have a motion pending to
14 intervene. At the moment, we're not parties.

15 JUDGE FRYSIAK: Would you note your appearances
16 for the record?

17 MR. FRIEDMAN: Barry Friedman and Scott Fenske, F-
18 E-N-S-K-E, of Thompson, Hine & Flory, representing James A.
19 Kay, Jr.

20 JUDGE FRYSIAK: All right. Thank you. Our agenda
21 for today primarily is to set procedural dates. We have an
22 outstanding issue. A motion has been filed, a motion to
23 intervene. May we have a discussion on that?

24 Mr. Schonman, what is the Bureau's position?

25 MR. SCHONMAN: Well, the Bureau has no intention

1 of filing any pleadings in opposition to the motion.

2 JUDGE FRYSIK: So, you concede that the motion is
3 properly filed?

4 MR. SCHONMAN: Yes.

5 JUDGE FRYSIK: There is merit to the motion, in
6 that the effects of this motion has a bearing on the
7 qualifications of the Kay people, isn't that true?

8 MR. SCHONMAN: Yes, sir, that could very well be.

9 JUDGE FRYSIK: So, I will grant the motion to
10 intervene.

11 Are there any other matters to discuss before we
12 set procedural issues? All right, let's consider discovery.
13 I understand there is a case that might be related to this
14 one, the case involving the Kay people, is that correct?

15 MR. SCHONMAN: Yes, docket 94-147.

16 JUDGE FRYSIK: Are the facts of either case, are
17 they related, the facts of both cases?

18 MR. FENSKE: It's properly with the Bureau.

19 JUDGE FRYSIK: Pardon?

20 MR. FENSKE: I think the Bureau should tell us
21 that, since they're the prosecutor here.

22 MR. SCHONMAN: Well, certainly, I would think that
23 any finding of wrongdoing in this proceeding could very well
24 impact on Mr. Kay's qualifications in the other proceeding,
25 docket 94-147.

1 JUDGE FRYSIAK: Yes.

2 MR. SCHONMAN: In terms of discovery, certainly
3 the issues are separate and distinct. There is no similar
4 issue at this time in the Kay proceeding. That is, the
5 other proceeding.

6 JUDGE FRYSIAK: Well, let me put it this way. How
7 much time do you people want for discovery before we have a
8 hearing in this?

9 MR. KELLER: Your Honor, speaking for myself, my
10 anticipation right now is not a lot more time, but it will
11 depend on the response to -- I have already initiated
12 discovery. We have filed interrogatories and an FOIA
13 request, and we do intend to file a request for admissions.
14 Subject to what we get in response to that, I don't know
15 that we will need a lot more time for discovery.

16 JUDGE FRYSIAK: You don't need a lot of time? Is
17 that correct, Mr. Schonman, in your case?

18 MR. SCHONMAN: Certainly, we will want to do some
19 depositions. We don't know the universe of individuals we
20 would want to depose. We anticipate doing the document
21 requests and serving interrogatories.

22 OF course, now that we have an additional party in
23 the proceeding, certainly Mr. Kay is entitled to do his own
24 discovery. That, will, I would anticipate, prolong
25 discovery to some extent. But, perhaps Mr. Friedman can

1 speak about that?

2 MR. FRIEDMAN: I guess until we see --

3 JUDGE FRYSIK: Would you speak up a little?

4 MR. FRIEDMAN: Yes, certainly. Until we see how
5 the Bureau lays out the case, and I don't know, haven't seen
6 any documents that Mr. Sobel has filed. I don't know
7 whether he is asking for some information regarding how the
8 case is going to move, but we will probably do some
9 depositions or some discovery when we know any impact on our
10 client resulting from what the bureau is doing or what Mr.
11 Sobel is doing.

12 At the moment, we just got in here. We haven't
13 seen any papers. We don't know what we're going to be
14 doing.

15 JUDGE FRYSIK: Well, you're familiar with your
16 client's station and its operation, are you not?

17 MR. FRIEDMAN: We are, but again, I think the
18 allegations are related to the business between my client
19 and Mr. Sobel, and we don't know what road the Bureau is
20 taking to deal with that. Are they going to be dealing with
21 our customers or with other parties?

22 JUDGE FRYSIK: You mean, you don't know what
23 evidence is out there for or against --

24 MR. FRIEDMAN: Right, or how they want to prove
25 it.

1 JUDGE FRYSIK: But, in filing the motion for
2 intervention, did you have any appreciation of the amount of
3 time that it might take you to prepare for this case?

4 MR. FRIEDMAN: We're certainly aware of that.
5 Again, the problem is, we don't know where the Bureau is
6 going. We think we can probably fit in with whatever Mr.
7 Sobel is doing timewise.

8 JUDGE FRYSIK: I don't understand what you mean
9 by, you don't know where the Bureau is going.

10 MR. FRIEDMAN: Well, again, we don't know what
11 allegations they intend to pursue, beyond these management
12 contracts. If it's the management contracts, we're familiar
13 with that and it won't take us much time.

14 I don't know if there's anything else that the
15 Bureau intends to pursue. Otherwise, we know the business,
16 we know what our contracts are. If that's all that this
17 case will be, we have very little discovery to undertake.

18 JUDGE FRYSIK: There's also the operation of the
19 stations that are named, is there not?

20 MR. SCHONMAN: Yes, Your Honor, and also the
21 hearing designation order in this case set forth a
22 recitation of the indicia that the Commission looks at in
23 determining where control lies. So, I think it's safe to
24 anticipate that the Bureau will be inquiring into those
25 particular areas that would be encompassed by the indicia of

1 control, in order to determine where control of these
2 particular stations lies.

3 MR. FRIEDMAN: Your Honor, I think we all would
4 benefit if the Bureau could give us a bill of particulars in
5 this case. I know that there's no rule that requires it. I
6 know that this Bureau, I don't know what this Bureau has
7 done. I know that other Bureaus in the Commission have done
8 it, to lay out where they're going. That would be very
9 helpful to us.

10 MR. SCHONMAN: Your Honor, may I respond?

11 JUDGE FRYSIK: Yes.

12 MR. SCHONMAN: In terms of the basis for the
13 issues in this HDO, I think that is spelled out quite
14 clearly that the basis for these issues lies in the
15 management agreement which Mr. Sobel provided to the Bureau.
16 That document, that management document, forms the basis for
17 the prima facie case which put this case in hearing.

18 It is from the terms and conditions in that
19 management agreement that the Commission saw fit to question
20 Mr. Sobel's basic qualifications. So, I would say that in
21 terms of a bill of particulars, that document which I
22 understand Mr. Kay also has a copy of, constitutes the bill
23 of particulars.

24 JUDGE FRYSIK: Yes, my impression is that this is
25 not a very complicated case. There's no reason why we can't

1 expedite this in the normal fashion. I'm thinking of three
2 months for discovery, 90 days.

3 MR. SCHONMAN: That would be adequate, Your Honor,
4 for the Bureau.

5 MR. KELLER: That's adequate for us, based on what
6 I know at this time.

7 JUDGE FRYSIK: So we'll set June 19 as the end of
8 discovery date.

9 MR. SCHONMAN: Your Honor, did you say June 19?

10 JUDGE FRYSIK: Yes. I'll set July 3 as the date
11 to exchange written direct cases and July 10 for
12 notification of witnesses for -- desired for cross-
13 examination. The interjections to notifications, July 17
14 and a hearing set for July 29.

15 MR. SCHONMAN: Your Honor, you anticipate that the
16 hearing will be here in Washington?

17 JUDGE FRYSIK: Well, I'm amenable to here or Los
18 Angeles, depending on what the circumstances of the case
19 dictate. I mean, if you have a lot of witnesses out there,
20 I'll go out there.

21 MR. SCHONMAN: Well, at this point, I don't know
22 how many witnesses we would have. Presumably, we would have
23 Mr. Kay and Mr. Sobel, so we know of two, and as I
24 understand it, both of those individuals are in the Los
25 Angeles area. But, beyond that --

1 JUDGE FRYSIAK: So, do you want it set here in
2 Washington, pending your application for transfer?

3 MR. SCHONMAN: I think tentatively Washington is
4 fine.

5 JUDGE FRYSIAK: Tentatively Washington, is that
6 what you said?

7 MR. SCHONMAN: Yes, yes, sir. Your Honor, just
8 for the record, this is William Kellett. He's also with the
9 Wireless Telecommunications Bureau in the Gettysburg office,
10 and he will be serving as co-counsel on this case.

11 JUDGE FRYSIAK: Good morning, Mr. Kellett.

12 MR. KELLETT: Good morning. I apologize for my
13 truancy.

14 JUDGE FRYSIAK: All right. So, we'll set the
15 hearing to be held tentatively in Washington, D.C. Let me
16 review, then, the procedural schedule.

17 I have set the period to end in discovery,
18 discovery should end on June 19 and you are required to
19 exchange written direct cases on July 3. You are required
20 to file a notification of witnesses desired for cross-
21 examination on July 10, and you are required to file
22 objections to witnesses requested for cross-examination on
23 July 17, and a hearing set here in Washington on July 29.

24 All of these filing dates, you will also, at the
25 same time, deliver copies to your parties, the other

1 parties.

2 All right, is there anything else for us to
3 consider?

4 MR. KELLER: Your Honor, I just want to clarify
5 something. The date for objection to notification of
6 witnesses, July 17, would it also be appropriate at that
7 time if one were to have any objections to any portion of
8 the written direct cases?

9 I mean, I don't know that that would be the case,
10 but if someone would have an objection to something.

11 JUDGE FRYSIK: Well, I'm going to wait until the
12 hearing date to hear objections.

13 MR. KELLER: Okay.

14 JUDGE FRYSIK: I wouldn't rule on them in advance
15 anyway. You're asking for written objections, is that it?

16 MR. KELLER: Well, I don't know. The cases are
17 going to be in advance, and I'm just wondering when would be
18 the appropriate time to present objections.

19 JUDGE FRYSIK: We'll wait until hearing.

20 MR. KELLER: Okay.

21 JUDGE FRYSIK: All right, if that's all we have
22 for today, we stand adjourned until July 29.

23 MR. SCHONMAN: Thank you, Your Honor.

24 MR. KELLER: Thank you, Your Honor.

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1 JUDGE FRYSIK: If I can be of any assistance to
2 you people, why, feel free to call. Thank you very much.

3 (Whereupon, at 9:15 a.m., the hearing was
4 concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 97-56


CASE TITLE: Marc Sobel

HEARING DATE: March 19, 1997

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

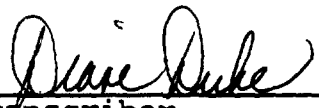
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: March 19, 1997


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